

STATE OF NEW HAMPSHIRE INSURANCE DEPARTMENT

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Charles N. Blossom
Insurance Commissioner

BULLETIN

Docket No. INS No. 98-010-AB

TO: All Insurers Licensed to Sell Automobile Insurance

FROM: Charles N. Blossom, Commissioner

DATE: May 5, 1998

RE: **Existing Statutes and Regulations Regarding
After Market Parts (Non-OEM) and Coercion or Steering**

Two pieces of legislation, (House Bill 1484 and Senate Bill 454) were introduced in the 1998 Session to address perceived inadequacies or unfairness in the application of the above referenced topics.

Insurance statutes and regulations already exist today that address these issues. This bulletin is intended as a reminder to all licensed automobile insurance writers of their obligations under current law and regulation.

I. After Market Parts Use and Disclosure

A. RSA 407-D:3 requires that:

"No insurer shall require the use of after market parts in the repair of an automobile unless the after market part is at least equal in like kind and quality to the original part in terms of fit, quality and performance. Insurers specifying the use of after market parts shall consider the cost of any modifications which may become necessary when making the repair."

1.) Thus, insurers cannot require the use of after market parts unless the parts are at least equal in like kind and quality to the original part in terms of fit, quality and performance. Accordingly, no insurer may require the use of such part unless it certifies or states in writing that the part is of like kind and quality.

2.) In addition, consistent with the second sentence of RSA 407-D:3, insurers shall begin capturing claim and financial information on the cost of modifications and any additional work or re-repair made necessary by the use of after-market parts.

B. RSA 407-D:4 requires that:

"The insurer shall disclose to the claimant in writing, either on the estimate or on a separate document attached to the estimate, the following information in no smaller than 10 point type:

This estimate has been prepared based on the use of automobile parts not made by the original manufacturer. Parts used in the repair of your vehicle by other than the original manufacturer are required to be at least equal in like kind and quality in terms of fit, quality and performance to the original manufacturer parts they are replacing.

All after market parts installed on the vehicle shall be clearly identified on the estimate of such repair."

The Insurance Department recommends strongly that insurers include policy language explaining the insurer's expectations regarding repairs with after market parts. The Department will be monitoring consumer complaints to determine whether voluntary compliance with this consumer disclosure is sufficient or whether mandatory regulation is called for.

II. Coercion or Steering

A. RSA 417:4 XX. states that:

"(a) No insurance company, and no agent or adjuster for such insurance company, that issues or renews in this state any policy of insurance covering, in whole or in part, motor vehicles shall require any insured person or entity under that policy to use a particular company or location for the providing of automobile glass replacement or automobile repair services or products insured in whole or in part by that policy.

(b) No such insurance company, agent or adjuster shall engage in any act or practice of intimidation, coercion, threat, for or against any such insured person or entity to use such a particular company or location to provide such services or products.

(c) Nothing shall prohibit any insurance company, agent or adjuster from providing to such insured person or entity the name of any automobile glass company or automobile repair company with which arrangements may have been made with respect to automobile glass or repair prices or services. If a name is provided, there must be disclosure by the insurance company, agent or adjuster to the insured person or entity that any other automobile glass company or automobile repair company or location may be used at the discretion of the insured person or entity. However, the insurer may limit payment for such work based on the fair and reasonable price in the area by repair shops or facilities providing similar services with the usual and customary guarantees as to materials and workmanship. If an independent repair shop or facility and an insurer are unable to agree on a price, then for the purposes of this section "fair and reasonable" shall mean the price available from a recognized, competent and conveniently located, independent repair shop or facility which is willing and able to repair the damaged automobile within a reasonable time."

B. Ins 1001.04 states that:

"In processing any claim for any damage to any motor vehicles as defined in RSA 268:1, IX, the insurer shall not require as a condition to the payment of such claims that repairs be made in a particular place or shop or by a particular concern."

All insurers are put on notice to immediately comply with the above referenced provisions. Insurers are reminded that "fair and reasonable price" does not mean the "lowest price" available; it means a range of available prices (including the average area price available) to perform the work using parts of like kind and quality with provision for the usual and customary guarantees as to materials and workmanship.

III. General Information

A. Violations of the laws and regulation will result in the imposition of penalties provided under the law, which may include the suspension or revocation of certificates of authority, and/or fine. Note that repairer challenges under RSA 407-D:3 to insurer mandates to use after market parts are protected by RSA 417:4 XX.

B. Any questions regarding any of the items contained in this bulletin may be referred to Steven J. Lauwers, Assistant Commissioner, State of New Hampshire Insurance Department, 169 Manchester Street, Concord, NH 03301. Telephone: 603-271-2261.